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September 24, 2019

BY ECF FILING

Hon. Joan M. Azrack
United States District Judge
Eastern District of New York
United States Courthouse
100 Federal Plaza
Central Islip, NY 11722-9014

Re: United States v. Abdulrahman Khwaja,
Cr 18-607 (JMA)

Dear Judge Azrack:

I represent Abdulrahman Khwaja in the above-referenced matter, and I write to respond briefly to the letter filed by the government on September 20, 2019. In its letter, the government asserts that it has produced its entire file relating to a CBP Examination of ISK Corporation and Solid Wireless in June 2017. I write to ask the Court to direct the Government to search its files relating to the CBP Examination for any evidence of the trade discrepancy described in paragraph 26(a) of the government's application for search warrants dated November 13, 2018. For the Court's reference, a copy of the cover page of the government's application and pages 15-16 of the application (where paragraph 26(a) appears) are attached as Exhibit A to this letter.

As the Court can see, the government's application asserts that ISK's exports "appear to be under-valued by approximately \$400,000, which means the value attributed to the exports shipped was far less than the amount paid for the exports by the KHWAJA COMPANIES, based on purchase records for this same period. Undervaluation is a common TBML technique." See Exhibit A. In other words, the government's application alleges that ISK was shipping merchandise to its customers that was declared to have a value of less than the cost of the merchandise to the KHWAJA COMPANIES, and the government claims that, during the two-month period described in Exhibit A, the total amount of the "under-valuation" noted by the government was \$400,000. Id.

It appears to the defendants that the government's allegations concerning

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undervaluation must derive from the CBP Examination that the CBP performed in May and June of 2017, given the date range of the “under-valuation” described in Exhibit A. The government is correct that it turned over records relating to that CBP Examination on February 15, 2019. However, a thorough review of those records does not indicate that the CBP found any “trade discrepancy” or “under-valuation” of the sort alleged in Exhibit A. To the contrary, the records provided by the government demonstrate that ISK and Solid Wireless were entirely transparent with CBP personnel. A copy of a lengthy summary memorandum of the CBP’s interaction with ISK and Solid Wireless personnel is attached as Exhibit B, and it includes no mention of any “trade discrepancy” or “under-valuation” of the sort alleged by the government in its search warrant application. Indeed, the CBP personnel who performed the CBP Exam of ISK and Solid Wireless ultimately found that ISK was missing some of the records it should have maintained, and issued a warning to ISK about that, but they made no mention of any “trade discrepancy” or “under-valuation” of the sort alleged by the government. A copy of the CBP’s findings at the close of its Exam of ISK’s records is attached as Exhibit C, and includes no mention of these issues.

Given the absence of any mention of a “trade discrepancy” or “under-valuation” in the materials provided to us by the government, and given the record of transparency on the part of ISK and Solid Wireless, we are concerned that the materials produced by the government are incomplete. We are quite confident that, if any inquiry concerning these issues was made of ISK or Solid Wireless, it was addressed and explained, just as the other issues raised by CBP during its Exam were. In these circumstances, we submit that the CBP’s records relating to this issue will tend to exculpate the defendants.

Therefore, we ask the Court to direct the government to search its files relating to the CBP Examination of ISK and Solid Wireless for any evidence of the trade discrepancy described in paragraph 26(a) of the government’s application for search warrants dated November 13, 2018.

Respectfully submitted.



Roland G. Riopelle

Cc: Burton Ryan, Esq. and Charles Kelly, Esq. (By ECF Filing)
All Defense Counsel (By ECF Filing)